

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE ROBERT MILLER,

Defendant-Appellant.

UNPUBLISHED

June 19, 2007

No. 268696

Wayne Circuit Court

LC No. 05-010257-01

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from convictions of carrying a concealed weapon in a motor vehicle, MCL 750.227(2), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant's sole claim on appeal is that the evidence was insufficient to prove that he carried or possessed the gun at issue. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The offense of carrying a concealed weapon in a motor vehicle requires that the defendant carry a pistol. MCL 750.227(2). The offenses of felon in possession and felony-firearm require that the defendant carry or possess a firearm. MCL 750.224f(2); MCL 750.227b(1). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989). A defendant may be found to have constructive possession of a firearm "if there is proximity to the [firearm] together with indicia of control," or "if the location of the weapon is known and it is reasonably accessible to the defendant." *Id.* at 470-471. "Carrying" is similar to possession and denotes intentional control or dominion over the weapon. *People v Butler*, 413 Mich 377, 390 n 11; 319 NW2d 540 (1982). Factors to consider in determining whether there is sufficient circumstantial evidence to sustain a conviction for carrying a weapon in a motor vehicle include: "(1) the accessibility or proximity of the weapon to the person of the defendant, (2) defendant's

awareness that the weapon was in the motor vehicle, (3) defendant's possession of items that connect him to the weapon, such as ammunition, (4) defendant's ownership or operation of the vehicle, and (5) the length of time during which defendant drove or occupied the vehicle." *Id.*

The evidence showed that the gun was discovered in a rental car during a traffic stop. The car had been impounded by the police while in the possession of the prior lessee and returned to the rental company. Michael Cook, the rental company's fleet manager, testified that after the car was returned from impound, it was next rented to defendant. Cook testified that it was his standard practice to thoroughly search a car returned from impound before it was rented out again. The search would have included lifting up and checking beneath the backseat. Cook stated that if a gun were found, it would have been turned over to the police; a gun would not have been in the car when it was rented out. An officer involved in the traffic stop testified that the backseat latch mechanism was unfastened and the seat was dislodged and raised slightly. He lifted the seat and found a loaded gun. Defendant had been in possession of the car for nine days and was driving it at the time of the traffic stop. In light of the facts and circumstances, viewed most favorably to the prosecution, the evidence was sufficient to prove that defendant possessed or carried the gun.

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood